

UT 01-8

Tax Type: Use Tax

Issue: Use Tax On Out-Of-State Purchase Brought Into Illinois

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

DEPARTMENT OF REVENUE
STATE OF ILLINOIS

v.

JOHN DOE

) 01ST 0000
) 0000-0000
) NTL # 00-0000000000000
)
) Mimi Brin
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe, pro se; Mark Muchin, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to John Doe's ("Doe" or "Taxpayer") protest of Notice of Tax Liability No. 00 00000000000000 ("NTL") issued by the Illinois Department of Revenue ("Department") on May 23, 2001, for Use Tax on purchases taxpayer made outside of Illinois which he brought into the State. At the hearing in this matter, taxpayer appeared on his own behalf. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department, and in support of this recommendation, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the NTL, showing a tax liability of \$192.00, a late filing penalty of \$4.00, and with interest accrued to the date of issue. Department Ex. No. 1

2. The Use Tax at issue is assessed on taxpayer's purchases in France and England that he brought into Illinois. Tr. p. 8

Conclusions of Law:

The Use Tax Act, 35 ILCS 105/1 *et seq.* ("UTA" or "UT") imposes a tax upon the privilege of using, in Illinois, tangible personal property purchased, at retail, from a retailer. *Id.* at 105/3 The UT applies to out of state purchases used in Illinois. Brown's Furniture, Inc. v. Wagner, 171 Ill.2d 410 (1996).

In the instant matter, taxpayer testified that he believes this assessment pertained to tangible personal property he purchased in England and France and brought into Illinois, making a Customs declaration. Tr. pp. 8-9 He concedes making the purchases, but avers that he was required to pay the Value Added Tax ("VAT") imposed upon the purchase of goods in those countries, and that the amount of the VAT he paid exceeds the Illinois Use Tax. *Id.* Doe also stated that whereas the VAT is refunded to the purchaser, (Tr. p. 9), it is not always the case, as all vendors are not registered to participate in the refund program and minimum purchase amounts are necessary to secure the documentation for the refund. *Id.* Although he did not directly testify that he did not receive a refund of the VAT he paid, his position at hearing appears to be just that.

Even if there is no quarrel with taxpayer's representation that he paid the VAT with each of his out of state purchases, his protest fails. First, as Doe acknowledges, the VAT is refunded, although there are purchases for which the refund is not available. However, there was no oral or documentary evidence regarding the vendors from whom the purchases were made, nor was there other evidence concerning the purchases that would allow a conclusion that they fell into the categories whereby refunds are not available.

There are basic, well-settled principles that apply in this matter. The NTL, when admitted into evidence, is *prima facie* correct as to the amount of tax due. 35 ILCS 120/5 (Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, provision incorporated into the Use Tax Act by 35 ILCS 105/12) Once admitted, the burden falls on the taxpayer to produce competent evidence, identified with his books and records, showing that the Department's determination of tax due is incorrect. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968); Masini v. Department of Revenue, 60 Ill. App.3d 11 (1st Dist. 1978) Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determination. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App.3d 826 (1st Dist. 1988)

Even assuming that he paid the VAT on his declared purchases, as taxpayer failed to produce any documentation to support his position that the VAT was not refunded to him in whole or in part, he has failed to overcome the *prima facie* correctness of the Department's assessment.

WHEREFORE, for the reasons stated above, it is my recommendation that the NTL at issue herein be finalized as issued.

11/8/01

Mimi Brin
Administrative Law Judge